

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 28, 2009

**STATE OF TENNESSEE v. WILLIAM HUBERT GREEN,  
ALIAS WILLIAM HERBERT GREEN**

**Appeal from the Criminal Court for Hamilton County**  
**Nos. 256460, 256896-98, 26234-35, 264036, & 264145     Rebecca Stern, Judge**

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**No. E2008-02780-CCA-R3-CD - Filed January 11, 2010**

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The Defendant, William Hubert Green, appeals from the Hamilton County Criminal Court's order revoking part of his probation received for an effective eighteen-year sentence for his convictions upon guilty pleas for six counts of aggravated burglary, a Class C felony, and two counts of burglary of a business, a Class D felony. He claims that the trial court erred in revoking his probation and in not imposing an alternative sentence. Although the record supports the partial revocation of the Defendant's probation, the trial court revoked the Defendant's probation for a sentence that was being served concurrently with a sentence for which the trial court intended for the Defendant to remain on probation. We reverse the judgments of the trial court and remand the case for reconsidering the revocation determinations.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Reversed,  
Case Remanded**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Ardena J. Garth, District Public Defender, Richard Kenneth Mabee (on appeal) and Kandi Rankin (at trial), Assistant Public Defenders, for the appellant, William Hubert Green, alias William Herbert Green.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth T. Ryan, Associate Deputy Attorney General; William H. Cox, III, District Attorney General; and William H. Hall, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

The Defendant was placed on probation on November 14, 2007, for the following convictions:

No.	Charge	Concurrent With	Consecutive To	Sentence
256460	Burglary of Business	256896		4 years
256896	Aggravated Burglary			6 years
256897	Aggravated Burglary	256896		6 years
256898	Aggravated Burglary	256896		6 years
263234	Aggravated Burglary		256896	6 years
263235	Aggravated Burglary	263234		6 years
264036	Burglary of Business	264145		4 years
264145	Aggravated Burglary		263234	6 years

At the revocation hearing, Officer Mike Early of the Chattanooga Police Department testified that he responded to a report of a burglary at a residence on February 4, 2008. He said the victim reported that he had found the Defendant's car parked in his driveway and tools he owned stacked inside his front door. Officer Early said that he found the Defendant approximately two or three blocks away from the scene and that he transported the Defendant to the police station. He said that he advised the Defendant of his rights, that the Defendant signed a waiver, and that the Defendant admitted stealing a saw from the victim's porch and breaking into the victim's house with the intent to steal more tools. He said the Defendant stated he fled the residence without taking anything when he heard a car arrive. He said he discovered that the Defendant was on probation when he searched for the Defendant's record. On cross-examination, Officer Early testified that nothing but the Defendant's statement linked him to the crime and that no fingerprints were taken from the residence.

The Defendant's probation officer, Nina Kyle, testified that she filed a petition to revoke the Defendant's probation. She acknowledged that the Defendant had received eighteen years on probation. She said the Defendant "did fairly well" on probation for the first six weeks by maintaining employment and paying fines. She said the Defendant lost his job about February 4, 2008. She said that the Defendant disappeared for about two weeks and then made contact with her and apologized, that he reported again on February 17 or 19, and that he disappeared again. She said that she sent letters to the Defendant's residence but

that he did not respond. She said that the Defendant took the family car and that his wife did not know his whereabouts. She said the Defendant acquired the new charges about which Officer Early had testified. She said the charges included theft of property valued over \$1,000, which had been dismissed; aggravated criminal trespass and vandalism, to which the Defendant pled guilty on March 19; and aggravated burglary and theft of property valued under \$500, which were pending before the grand jury. She said the Defendant had not paid any restitution.

On cross-examination, Ms. Kyle testified that the Defendant told her he absconded the first time because he was scared and nervous and because he was a newlywed and had a “family situation” with his wife. She said that the Defendant was not referred for mental health treatment but that his wife had obtained counseling for him through her church. She said she never saw the Defendant again after the second time he absconded.

The Defendant testified that when he was first placed on probation, he had recently married and worked as a painter. He said that he lost his job and could not find other work and that he turned to the streets and drugs for comfort, which caused him to violate the rules of his probation. He admitted that he had a drug problem. He said that the court had ordered him furloughed to the Council for Alcohol and Drug Abuse Services (CADAS) for alcohol and drug assessment and that he had been approved for treatment. When asked if he could provide any other reasons for the court to give him another opportunity, the Defendant said he wanted a chance to raise his one-year-old son. He apologized and asked for a last chance.

On cross-examination, the Defendant agreed that he could have avoided jail by not breaking into houses. He agreed that in order to break into the victim’s house, he had climbed to the second story. He said he was not on drugs. He said he had applied to but had not been approved for drug court.

The trial court found that the Defendant had violated his probation by acquiring a new aggravated burglary charge to which he had confessed, by absconding from probation, and by not paying restitution. The court revoked the Defendant’s probation on all his convictions except case number 264145, for which he was placed on intensive probation with the condition of drug treatment. The court stated that the Defendant would have “to serve some time and pay some consequences, and then he’ll have another chance on the last remaining ten years to get the help he wants and to get his life together.”

The Defendant appeals and contends that the trial court erred in revoking his probation and in not imposing alternative sentencing because he should have been allowed to attend the CADAS program for which he had been approved. The State contends that the trial court did not abuse its discretion by revoking the Defendant’s probation because the

Defendant had failed to report to his probation officer, had absconded from probation, and had acquired new charges while on probation.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2006). If a trial court revokes a defendant's probation, its options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310; see State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless it appears that there has been an abuse of discretion. See State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981).

Although the plea submission transcript is not included in the record, the record contains the Defendant's Petition to Enter Plea of Guilty and Waiver of Trial by Jury in which he agreed to a six-year sentence for number 265145. At the revocation hearing, the Defendant's probation officer and defense counsel informed the court that the Defendant's sentence was an effective eighteen years, indicating number 265145 was for six years. However, the sentence length listed on the judgment for number 264145 is illegibly written and could be perceived as a ten instead of six. In addition, both probation violation reports in the record on appeal reflect the Defendant's sentence for number 264145 as ten years, and the record reflects that the trial court believed the Defendant's sentence for number 264145 was ten years. Finally, the Defendant's sentence in number 264036 was to be served concurrently with his sentence for number 264145. However, the trial court revoked the Defendant's probation for number 264036, which meant that a portion of number 264145 would have been served in confinement.

The record supports the trial court's revocation of the Defendant's probation. The violations were undisputed. However, it is unclear whether the trial court intended to revoke, modify, or extend the Defendant's probation for number 264145, or whether the trial court intended to revoke the Defendant's probation for all his convictions except numbers 264036 and 264145. Moreover, we cannot determine if the trial court thought important the fact that it intended ten years' probation. The case must be remanded for clarifying the trial court's revocation orders. If the trial court deems it necessary, further proof on the issues may be accepted.

In consideration of the foregoing and the record as a whole, the judgments of the trial court are reversed, and the case is remanded.

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JOSEPH M. TIPTON, PRESIDING JUDGE